IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8054 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ARJANDRASINGH @ ARJAN GOPALSINGH JHAT

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

Mr. U.R. Bhatt, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 06/02/98

ORAL JUDGEMENT

By this application, under Article 226 of the Constitution of India, the petitioner who is the detenu, calls in question the legality and validity of the detention order passed by the Commissioner of Police, Ahmedabad City on 1st October, 1997 invoking Sec.3(2) of the Gujarat Prevention of Anti-Social Activities Act (hereinafter be referred to as "the Act ").

2. Necessary facts leading the petitioner to file this petition may in brief be stated. About Four

complaints came to be lodged against the petitioner, three in Sardarnagar police station, Ahmedabad City and one in Thara police station, District-Banaskantha. The complaints were relating to the offences punishable under Section 379, 392 read with Sec. 114 and 120-B, Indian Penal Code as well as Section 34 & 25 (1)(a) Arms Act as well as Section 135 Bombay Police Act. It is alleged in those cases that the petitioner being a head-strong person was disturbing the public order by his nefarious activities and his activities were going berserk. It is also alleged in those complaints that the petitioner was committing the theft of Maruti vans and motor-trucks. The Commissioner of Police, having come to know about the subversive activities of the petitioner, made detailed enquiry and perused the available record. He found that the petitioner was a head-strong person i.e. a tartar & decimator and by different criminal activities, he was terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order were going berserk. No one was, therefore, ready to come forward and state against him. After a great persuation and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under great tension stated against the petitioner. After a deep inquiry, the Police Commissioner found that to curb the anti-social, subversive and chaotic activities of the petitioner, unspeakable diabolism terrorising the society, and upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested and at present,he is in custody.

3. On behalf of the petitioner, challenging the impugned order, it is submitted that the order in question is passed after a great delay, as a result, the continuous detention has been rendered illegal. There was no justification for the authority passing the detention order withholding particulars. exercising the privilege under Sec.9(2) of the Act. The detaining authority ought to have disclosed the particulars of the witnesses whose statements were recorded in support of the order passed. No doubt, under Section 9 of the Act, the authority has the privilege, but that is to be exercised judiciously, and not arbitrarily or capriciously so as to deprive the detenue of his right to have effective representation. As the particulars were

not given, the petitioner was deprived of his right to have the effective representation against the order. The instances about the offences noted in the order were not sufficient to brand him a dangerous person or to form a reasonable belief that maintenance of public order was adversely affected. The statements recorded are vague and necessary particulars when wanting, the order is bad in law and is liable to be quashed.

4. Mr. Bhatt, the learned AGP has vehemently refuted the allegations made, submitting that there is no delay on the part of the authority passing the order of detention, promptly order was passed and in the public interest, certain facts & particulars are withheld.

5. At the time of hearing, after I put up the queries, both the ld. advocates confined their submissions to the point of exercise of privilege under Section 9(2) of the Act. When that is so, I would not be dwelling upon other grounds and would confine myself to the only point i.e. exercise of privilege under Section 9(2) and its impact.

6. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is, therefore, required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases, where public interest dictating non-discosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and

consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements and necessary inquiry is entrusted to others, and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, W/o. Ibrahim Abdul Rahim Alla Vs. State of Gujarat and others- 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel Vs. State of Gujrat & Others 35(1) [1994(1)] G.L.R. 761, may be made.

7. In view of such law, the authority passing the detention order has to satisfy the court that it was absolutely necessary in the public interest to suppress the particulars about the witnesses keeping their safety in mind. It is pertinent to note that in this case no affidavit of the authority passing the detention order has been filed and it is not explained how the exercise of the privilege under Section 9(2) of the Act was justified. When that is the case, the exercise of the privilege being unjust and arbitrary, the petitioner was

deprived of his right to make effective representation and therefore the detention order cannot be held constitutional. Consequently, the continued detention is illegal. The order of detention being unconstitutional is required to be quashed and set aside and the petitioner is required to be set at liberty.

8. For the aforesaid reasons, this petition is allowed. The order of detention passed on 1st October, 1997 by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forth with, if not required in any other case. Rule accordingly made absolute.

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